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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/782,503	02/13/2001	Robert T. Stone	PLC-02-002U	9929

7590 08/28/2003

Francis Law Group
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EXAMINER	
GRIER, LAURA A	

ART UNIT	PAPER NUMBER
2644	4

DATE MAILED: 08/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/782,503	STONE ET AL.	
	Examiner	Art Unit	
	Laura A Grier	2644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-14 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-14 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2 .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-14 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2, and 7 of U.S. Patent No.6503207 (herein, USPN-207). Although the conflicting claims are not identical, they are not patentably distinct from each other because the all the claims are drawn to testing hearing of the inner ear based upon a true random stimulus sequence for improving the results of audiometric testing excluding unwanted noise artifacts or characteristics.

Regarding **claim 1**, claim 1 of USPN-207 discloses a stimulus generating means for transmitting at least one true random stimulus sequence to a subjects inner ear (line 5-6), which reads on a stimulus generating means; and a detection means for detecting an otoacousti emission signal (which a response signal from the inner ear) – lines 13-14, which reads on a detection means.

Regarding **claim 2**, claims 1-3 of USPN-207 discloses the apparatus including an analyzer means for controlling the stimulus and generating means and analyzing (lines 16-32).

Regarding **claims 3, 5-6 and 7**, respectively, claim 1 of USPN-207 discloses an apparatus for comprising stimulus generating means for transmitting at least one true random stimulus sequence to a subjects inner ear (line 42-43), and an analyzer means indicating of providing a sampling means (lines 16-25), which reads on a stimulus generating means and sampling means.

Regarding **claims 4, and 8-9** claims 2-3 of USPN-207 discloses the apparatus including an analyzer means for controlling the stimulus and generating means and analyzing (lines 28-32).

Regarding **claims 10 and 14**, respectively, claim 7 of USPN-207 discloses a stimulus generating means for transmitting at least one true random stimulus sequence to a subjects inner ear (line 42-43), which reads on a stimulus generating means; and a detection means for detecting an otoacoustic emission signal (which a response signal from the inner ear) – line 48, which reads on a detection means.

Regarding **claim 11**, claim 7 of USPN-207 discloses a plurality of true random stimulus sequence presented the subject's ear (col. 53-62).

Regarding **claims 12 and 13,** respectively, respectively, claim 7 of USPN-207 discloses a stimulus generating means for transmitting at least one true random stimulus sequence to a subjects inner ear (line 42-43), which reads on presenting a

stimulus seqeunce; and a detection means for detecting an otoacoustic emission signal (which a response signal from the inner ear) – line 48, which reads on detecting the response signal; sampling which is indicated by the averaging of the set of OAE signal data and reconstructing a waveform, (lines 61-62), recording the OAE signals (line 52).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-2, 10, 11 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thornton, U. S. Patent No. 5546956.

Regarding **claims 1, 10, and 14**, Thornton discloses testing hearing. Thornton's disclosure comprises stimulus generating equipment (2), and microphone for conveying the sound recorded in the ear canal, which reads detecting the response on the claimed limitations (col. 2, lines 51-65, and col. 5, lines 39-45). However, Thorton fails to specifically disclose the stimulus as being true random stimulus. The use of true or pure stimulus was known in the art. Thus it would have been obvious to one of the ordinary skill in the art at the time the invention was made to modify the invention of Thorton by implementing true random stimulus or the like, such pure tone acoustic stimulus of the purpose of improving audiometric testing of one hearing by lessening the noise characteristics of the stimulus signal.

Regarding **claim 2**, Thornton discloses everything claimed as applied above (see claim 1). Thornton further discloses an analyzer. (col. 2, lines 64-65).

Regarding **claim 11**, Thornton discloses everything claimed as applied above (see claim 1). It is obvious that one of ordinary skill would include a plurality of true random stimulus for the purpose of conducting a hearing in desire to acquire an accurate measurement of the listener's hearing, wherein, it is common practice for a plurality of stimulus to be generated during a hearing test, wherein, statistically data is more precise when acquired over a plurality or multiple trials.

Prior Art

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Ishige et al., U. S. Patent No. 6094489 discloses a digital hearing aid and its hearing sense compensation processing method.

Bye et al., U. S. Patent No. 6366863 discloses a portable hearing-related analysis system.

Smits et al., U. S. Patent No. 6343230 discloses a hearing evaluation device with predictive capabilitites.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura A Grier whose telephone number is (703) 306-4819. The examiner can normally be reached on Monday - Friday, 7:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Forester W. Isen can be reached on (703) 305-4386.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

Or faxed to:

(703) 872-9314 (for Technology Center 2600 only)

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.

LAG
August 23, 2003

MINSUN OH HARVEY
PRIMARY EXAMINER